

Certification of Consistency

Certification ID: C20161

Step 1 - Agency Profile

A. GOVERNMENT AGENCY:

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State Agency

☐

Local Agency

Government Agency: State and Federal Water Contractors Agency (SFCWA)

Primary Contact: Byron Buck, Executive Director

Address: 1121 L Street, Suite 806

City, State, Zip: Sacramento, CA 95814

Telephone/Fax: (916) 476-5056 / FAX (916) 476-5057

E-mail Address: tbeltran@sfcwa.org

B. GOVERNMENT AGENCY ROLE IN COVERED ACTION:

☒

Will Carry Out

☒

Will Approve

☒

Will Fund

Step 2 - Covered Action Profile

IT IS RECOMMENDED THAT YOU ENGAGE IN EARLY CONSULTATION WITH DSC STAFF AND/OR COMPLETE THE COVERED ACTION CHECKLIST TO DETERMINE IF THE PLAN, PROGRAM OR PROJECT IS CONSIDERED A COVERED ACTION AND TO IDENTIFY RELEVANT REGULATORY POLICIES

A. COVERED ACTION PROFILE: ☐ Plan ☐ Program ☒ Project

Title: Tule Red Tidal Restoration Project

B. PROPONENT CARRYING OUT COVERED ACTION (If different than State or Local Agency):

Proponent Name: Byron Buck, Executive Director

Address: 1121 L Street, Suite 806

City, State, Zip: Sacramento, CA 95814

C. AT LEAST 10 DAYS PRIOR TO THE SUBMISSION OF A CERTIFICATION OF CONSISTENCY TO THE COUNCIL, agencies whose actions are not subject to open meeting laws (Bagley-Keene Open Meeting Act [Gov. Code sec 11120 et seq.] or the Brown Act [Gov. Code sec 54950 et seq.]) with regard to its certification, must post for public review and comment, their draft certification on their website and in their office, and mail to all persons requesting notice.

Any state or local public agency that is subject to open meeting laws with regard to its certification is also encouraged to take those actions.

(Note: Any public comments received during this process must be included in the record submitted to the Council in case of an appeal.)

If applicable, did you comply with this requirement? ☐ YES ☒ NO ☐ N/A

D. COVERED ACTION SUMMARY: (Project Description from approved CEQA document may be used here)

Historically, the Suisun Marsh was a tidal marsh system. In the late 1800s, the Marsh was diked for water management to support agriculture and duck hunting club activities. The Project site is located in Suisun Marsh (Solano County), adjacent to Grizzly Bay, the DFW Grizzly Island Wildlife Area, and the Grizzly King Duck Club. This property has long been managed as the Tule Red Duck Club (420 acres). The property is owned and managed by Westervelt Ecological Services (WES), with a small portion owned by CDFW (70 acres). The vast majority of the site is managed marsh, with a small area of tidal marsh at the northern end of the site and along the bayside margin of the natural berm. Upland habitat is located along the uppermost crowns of the adjacent levees.

The Project would restore habitat for delta smelt, longfin smelt and salmon by restoring estuarine marsh and shallow water habitat in the Suisun Marsh area, thereby restoring approximately 420 acres of existing managed brackish wetlands to tidal habitat. The Project would provide four primary habitat features: 1) a breach of the natural berm at the northern part of the Project area to allow for full daily tidal exchange through the interior of the Project site; 2) a network of tidal channels to regularly convey water across the marsh plain; 3) a series of tidal pannes/basins intended to retain water for periods of up to 2 weeks to maximize aquatic food production; and 4) a habitat berm created along the eastern perimeter of the property, which is designed to provide transitional and refugia habitat for sensitive species including the salt marsh harvest mouse. The Project would partially fulfill the 8,000-acre tidal restoration obligations of the Fish Restoration Program Agreement (FRPA), satisfying the requirements of the U.S. Fish and Wildlife Service's 2008 Biological Opinion for Delta Smelt, the 2009 National Marine Fisheries Service's Biological Opinion for the Coordinated Operations of the State Water Project (SWP) and the Federal Central Valley Project (CVP), and the Longfin Smelt Incidental Take Permit for the SWP. The Project is consistent with the requirements in the Suisun Marsh Habitat Management, Preservation, and Restoration Plan (Suisun Marsh Plan, or SMP) (Reclamation et al., 2013). It is also identified as a priority restoration project under the California EcoRestore program.

E. STATUS IN THE CEQA PROCESS: NOD has been filed

F. STATE CLEARINGHOUSE NUMBER: 2003112039
(if applicable)

G. COVERED ACTION ESTIMATED TIME LINE:

ANTICIPATED START DATE: (If available) 6/15/2016

ANTICIPATED END DATE: (If available) 10/31/2019

- H. COVERED ACTION TOTAL ESTIMATED PROJECT COST: \$11,000,000.00
- I. IF A CERTIFICATION OF CONSISTENCY FOR THIS COVERED ACTION WAS PREVIOUSLY SUBMITTED, LIST DSC REFERENCE NUMBER ASSIGNED TO THAT CERTIFICATION FORM:
- J. SUPPORTING DOCUMENTS: [CEQA NOD 3 17 2016.pdf](#), [CEQA NOD on SMP by CDFW 12 23 2011.pdf](#), [CEQA Addendum-Tule Red.pdf](#), [App. B TuleRed ECs and MMs.pdf](#), [App. C Methym and DO Memo.pdf](#), [App. D.1 Salinity Memo.pdf](#), [App. D.2 Basis of Design 30Nov2015.pdf](#), [App. E SpecialStatus Plant Species.pdf](#), [App. F CCR BR LeastTern Memo.pdf](#), [App. H Cultural report.pdf](#), [Additional Conservation Measures.pdf](#), [Tule Red AMMP Draft 3-01-2016.pdf](#), [Tule Red - Detailed Findings 4-29-2016 final.pdf](#), [Tule Red - MMs and Consistency with DP MMRP.pdf](#), [FRPA implementation strategy.pdf](#)

Step 3 - Consistency with the Delta Plan

DELTA PLAN CHAPTER 2

G P1 / 23 CCR SECTION 5002 – Detailed Findings to Establish Consistency with the Delta Plan.

In General: (23 CCR SECTION 5002 (a), (b), (1)) This regulatory policy specifies what must be addressed in a certification of consistency filed by a State or local public agency with regard to any covered action.

This regulatory policy only applies after a “proposed action” has been determined by a State or local public agency to be a covered action because it is covered by one or more of the regulatory policies listed under Delta Plan Chapters 3, 4, 5, and 7 of this form. Inconsistency with this policy may be the basis for an appeal.

Covered actions, in order to be consistent with the Delta Plan, must be consistent with this regulatory policy and with each of the regulatory policies listed under Delta Plan Chapters 3, 4, 5 and 7 of this form implicated by the covered action. The Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with all relevant regulatory policies may not be feasible. In those cases, the agency that files the certification of consistency may nevertheless determine that the covered action is consistent with the Delta Plan because, on whole, that action is consistent with the coequal goals. That determination must include a clear identification of areas where consistency with relevant regulatory policies is not feasible, an explanation of the reasons why it is not feasible, and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals. That determination is subject to review by the Delta Stewardship Council on appeal;

Specific requirements of this regulatory policy:

Mitigation Measures (23 CCR SECTION 5002 (b), (2))

- a. The covered action is not exempt from CEQA, and includes applicable feasible mitigation measures identified in the Delta Plan’s Program Environmental Impact Report, (unless the measure(s) are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute mitigation measures that the agency that files the certification of consistency finds are equally or more effective.

Is the covered action consistent with this portion of the regulatory policy?

☒ YES ☐ NO ☐ N/A

Answer Justification: The Project is consistent with all applicable mitigation measures, as described in the attached document (‘Detailed Findings - Mitigation Measures, Best Available Science, and Adaptive Management’) and additional documents referenced within. [Tule Red - Detailed Findings 4-29-2016 final.pdf](#), [CEQA Addendum-Tule Red.pdf](#), [App. B TuleRed ECs and MMs.pdf](#), [CEQA NOD 3 17 2016.pdf](#), [Additional Conservation Measures.pdf](#), [Tule Red - MMs and Consistency with DP MMRP.pdf](#)

Best Available Science (23 CCR SECTION 5002 (b), (3))

- b. The covered action documents use of best available science as relevant to the purpose and nature of the project.

Is the covered action consistent with this portion of the regulatory policy? [Appendix 1A](#) is referenced in this regulatory policy.

☒ YES ☐ NO ☐ N/A

Answer Justification: The Project documents the use of best available science practices as relevant to the purpose and nature of the Project, as described in the attached document (‘Detailed Findings - Mitigation Measures, Best Available Science, and Adaptive Management’) and additional documents referenced within. Therefore, the Project is consistent with this policy. [Tule Red - Detailed Findings 4-29-2016 final.pdf](#), [Tule Red AMMP Draft 3-01-2016.pdf](#), [App. D.2 Basis of Design 30Nov2015.pdf](#)

Adaptive Management (23 CCR SECTION 5002 (b), (4))

- c. The covered action involves ecosystem restoration or water management, and includes adequate provisions, appropriate to its scope, to assure continued implementation of adaptive management

Is the covered action consistent with this portion of the regulatory policy? [Appendix 1B](#) is referenced in this regulatory policy.

☒ YES ☐ NO ☐ N/A

Answer Justification:

Finding A: The Project includes an adaptive management and monitoring plan (AMMP; uploaded) that has been developed in accordance and is consistent with the Delta Plan Appendix 1B framework. Finding B: The Project proponent has access to adequate resources and delineated authority to implement the proposed adaptive management process. The Project involves ecosystem restoration, and includes adequate provisions, appropriate to its scope, to assure continued implementation of adaptive management, as described above and in the attached document ('Detailed Findings - Mitigation Measures, Best Available Science, and Adaptive Management'). This project's AMMP will be funded under the current DWR/DFW funding agreement for implementation of the Fish Restoration Program (FRP), as DFW will likely be the long term land owner and manager and will, as such, be reimbursed for management and monitoring by DWR under the attached 2010 FRP Agreement. Therefore, the Project is consistent with this policy. [Tule Red AMMP Draft 3-01-2016.pdf](#), [Tule Red - Detailed Findings_4-29-2016 final.pdf](#), [FRPA implementation_strategy.pdf](#)

DELTA PLAN CHAPTER 3

[WR P1 / 23 CCR SECTION 5003](#) - Reduce Reliance on the Delta through Improved Regional Water Self-Reliance

Is the covered action consistent with this regulatory policy?

☐ YES ☐ NO ☒ N/A

Answer Justification: The covered action does not involve water that is exported from, transferred through, or used in the Delta.

[WR P2 / 23 CCR SECTION 5004](#) - Transparency in Water Contracting

Is the covered action consistent with this regulatory policy? [Appendix 2A](#) and [Appendix 2B](#) are referenced in this regulatory policy.

☐ YES ☐ NO ☒ N/A

Answer Justification: The covered action does not involve entering into or amending water supply or water transfer contracts subject to DWR Guideline 03-09 and/or 03-10 (each dated July 3, 2003), (Appendix 2A).

DELTA PLAN CHAPTER 4

Conservation Measure: (23 CCR SECTION 5002 (c))

A conservation measure proposed to be implemented pursuant to a natural community conservation plan or a habitat conservation plan that was:

(1) Developed by a local government in the Delta; and

(2) Approved and permitted by the California Department of Fish and Wildlife prior to May 16, 2013

is deemed to be consistent with the regulatory policies listed under Delta Plan Chapter 4 of this form (i.e. sections 5005 through 5009) if the certification of consistency filed with regard to the conservation measure includes a statement confirming the nature of the conservation measure from the California Department of Fish and Wildlife.

Is a statement confirming the nature of the conservation measure from the California Department of Fish and Wildlife available?

☐ YES ☐ NO ☒ N/A

Answer Justification: The covered action does not include a natural community conservation plan or a habitat conservation plan.

[ER P1 / 23 CCR SECTION 5005](#) - Delta Flow Objectives

Is the covered action consistent with this regulatory policy?

☐ YES ☐ NO ☒ N/A

Answer Justification: The covered action does not significantly affect flow in the Delta.

[ER P2 / 23 CCR SECTION 5006](#) - Restore Habitats at Appropriate Elevations

Is the covered action consistent with this regulatory policy? [Appendix 3](#) and [Appendix 4](#) are referenced in this regulatory policy.

☒ YES ☐ NO ☐ N/A

Answer Justification: The Project proposes habitat restoration that will be carried out at appropriate elevations for the types of habitat restoration efforts that are planned. The Project is consistent with the SMP as well as with ERPP Goal 4 (Habitats). The Project site is identified on the Ecosystem Restoration Program's Delta Conservation Strategy Map as within the existing intertidal range (CDFG 2011, Delta Stewardship Council 2013). Existing and post-project elevations are appropriate for intertidal wetlands (App. D.2 Hydraulic and Geomorphic Basis of Design Report). The Project will restore tidal wetlands by reconnecting lands currently at appropriate intertidal elevations to tidal exchange. The Project will also create and enhance refugia habitat between tidal and upland elevations in order to accommodate high tides and future sea level rise. The Project would not conflict with land elevations identified for "intertidal" (CEQA Addendum Section 3.3.5 Land Use). Based on the above, the Project is consistent with this policy. [App. D.2 Basis of Design_30Nov2015.pdf](#), [CEQA Addendum-Tule Red.pdf](#)

ER P3 / 23 CCR SECTION 5007 - Protect Opportunities to Restore Habitat

Is the covered action consistent with this regulatory policy? [Appendix 4](#) and [Appendix 5](#) are referenced in this regulatory policy.

☒ YES ☐ NO ☐ N/A

Answer Justification: The Project protects opportunities to restore habitat. The Project is consistent with Delta Plan policy ER P3. The Suisun Marsh is one of six priority habitat restoration areas designated by the Delta Plan (Delta Stewardship Council 2013). The conversion of managed wetlands to tidal wetlands under the proposed project would be consistent with restoring habitat and would support ER P3 in protecting opportunities to restore habitat (CEQA Addendum - Section 3.3.5 Land Use). [CEQA Addendum-Tule Red.pdf](#)

ER P4 / 23 CCR SECTION 5008 - Expand Floodplains and Riparian Habitats in Levee Projects

Is the covered action consistent with this regulatory policy? [Appendix 8](#) is referenced in this regulatory policy.

☐ YES ☐ NO ☒ N/A

Answer Justification: The covered action does not construct new levees or substantially rehabilitate or reconstruct existing levees.

ER P5 / 23 CCR SECTION 5009 - Avoid Introductions of and Habitat for Invasive Nonnative Species

Is the covered action consistent with this regulatory policy?

☒ YES ☐ NO ☐ N/A

Answer Justification: The Project includes measures to avoid Introductions of and habitat improvements for invasive nonnative species. As summarized in the Project's CEQA Addendum (Section 3.3.5 Land Use Policies), the Project could result in introduction or spread of noxious weeds or invasive plant species due to soil-disturbing activities associated with grading and construction, or tidal exchange. Common reed (*Phragmites australis*) occurs at the site and is currently managed by chemical control. The Project includes multiple environmental commitments to avoid introducing invasive nonnative species and the Project would control invasive species through various environmental commitments and design measures (CEQA Addendum Appendix B – ECs and MMs). The Project also includes an Adaptive Management and Monitoring Plan (AMMP) that incorporates monitoring and management responses to control non-native invasive species. The SMP EIS/EIR and CEQA Addendum determined that restoration activities would have a less-than-significant impact on invasive plant species and noxious weeds (CEQA Addendum: Section 3.3.2.2 Noxious Weeds/Invasive Plants; Table 3-7 - Impact Checklist; Section 3.3.5 – Land Use Policies). Non-native invasive aquatic species, such as striped bass and Asian clams, already occur in Suisun Marsh, and no policies or control measures exist to feasibly eliminate or control these species. Numerical modeling of the Project design and observations of other tidal marsh sites indicate that a scour hole (a feature associated with predatory non-native fishes) would not likely form at the entrance to the Project site (Section 3.3.1.3 Hydrology). Based on the above, the Project is consistent with the restoration goals of the SMP and Delta Plan Policy ER P5. [CEQA Addendum-Tule Red.pdf](#), [App. B TuleRed ECs and MMs.pdf](#), [Tule Red AMMP Draft 3-01-2016.pdf](#)

Is the covered action consistent with this regulatory policy? [Appendix 6](#) and [Appendix 7](#) are referenced in this regulatory policy.

☐ YES ☐ NO ☒ N/A

Answer Justification: The covered action does not involve new residential, commercial, or industrial development.;

DP P2 / 23 CCR SECTION 5011 - Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats

Is the covered action consistent with this regulatory policy?

☒ YES ☐ NO ☐ N/A

Answer Justification: The Project is a habitat restoration project which respects local land use. The Project site selection and Project design both took into account existing local land uses and will not create conflicts with existing or planned local land uses. There has been extensive communication and coordination with neighbors. Prior to acquisition in 2011, Westervelt studied the existing characteristics of the property as well as the surrounding land uses to determine if selection of the site was in alignment with the considerations for siting tidal restoration projects from the SMP. WES then consulted with Steve Chappell of the Suisun Resource Conservation District and the staff of CDFW Grizzly Island Wildlife Area to get their opinion of the effect of the project. After acquisition, contact was made by WES Executive Vice President Greg Sutter with all adjoining landowners (Grizzly King, Mendoza, Honker Farms, Merganser, Westwind, Montezuma, Sprig Farms, and St. Germain) to discuss their ongoing operations and water management of the other properties to determine whether or not the proposed project would have a negative effect on existing surrounding land uses. The Design takes into account the needs of neighboring properties that share the tidal channel to the north of the project by avoiding any increased tidal flows within those channels that could dampen tidal levels for flooding or draining those properties. Stated project objectives include: • The Project should result in no impacts to the existing Roaring River Distribution System. • The Project should result in an improvement to water drainage over the existing CDFW Grizzly Island Wildlife Area drainage system. • The Project should result in no impacts to water supply, drainage, or access to the Grizzly King Duck Club. These objectives were drivers in site selection, selection of the preferred restoration design alternative, and the final Project design. As summarized in the CEQA Addendum (Sec. 3.3.5 – Land Use Policies), the Project does not include the siting of water or flood facilities. The conversion of managed wetlands to tidal wetlands is not considered an incompatible use with the existing land use designations of the Project area or of the adjacent areas in the vicinity (primarily designated by Solano County as “marsh” and “agriculture”). The overall current use of the Suisun Marsh, in general, and of the Project area specifically, for recreational activities (hunting, fishing, wildlife viewing, walking, etc.) would not change. In addition, restoration of the Project site would not affect water management on the adjacent Grizzly King property because the proposed habitat berm would protect this adjacent property from the expected tidal exchange once the existing natural berm is breached and the project site it is fully restored. Finally, the CDFW Grizzly Island Wildlife Area would continue to be managed by CDFW under its current management plan and the Project would not affect that management. Under the Project design, the existing drain that allows CDFW to pump discharged drain water from the managed wetlands of the Grizzly Island Wildlife Area onto the Project site would be modified by installation of a spray aeration structure and constructing a pooling area, as described in Chapter 2 of the CEQA Addendum. This modification would not impact the Grizzly Island Wildlife Area because it would not change the hydrodynamics of the drain (i.e., the drain would continue to drain from the CDFW property onto the Project site) and because it would result in improved water quality (i.e. higher dissolved oxygen) from the CDFW area onto the Project site. The CEQA Addendum (Section 3.3.5 – Land Use Policies) concludes that implementation of the SMP, including restoration projects envisioned by the SMP such as the Project, would not alter existing land use patterns; conflict with existing land use plans, policies, and regulations; or conflict with any applicable habitat conservation plan or natural community conservation plan. The Project also would not alter the existing land use patterns; conflict with existing land use plans, policies, and regulations; or conflict with the existing SMP. Based on the above, the Project is consistent with the restoration goals of the SMP and Delta Plan Policy DP P2 [CEQA Addendum-Tule Red.pdf](#)

DELTA PLAN CHAPTER 7

RR P1 - Prioritization of State Investments in Delta Levees and Risk Reduction

Is the covered action consistent with this regulatory policy?

☐ YES ☐ NO ☒ N/A

Answer Justification: The covered action does not involve discretionary State investments in Delta flood risk management including levee operations, maintenance, and improvements.

RR P2 - Require Flood Protection for Residential Development in Rural Areas.

Is the covered action consistent with this regulatory policy? [Appendix 7](#) is referenced in this regulatory policy.

☐ YES ☐ NO ☒ N/A

Answer Justification: The covered action does not involve new residential development of five or more parcels.

RR P3 - Protect Floodways

Is the covered action consistent with this regulatory policy?

☐ YES ☐ NO ☒ N/A

Answer Justification: The covered action does not encroach within any floodway.

RR P4 - Floodplain Protection

Is the covered action consistent with this regulatory policy?

☐ YES ☐ NO ☒ N/A

Answer Justification: The covered action does not encroach in any of the following floodplain areas:
(1) The Yolo Bypass within the Delta;
(2) The Cosumnes River-Mokelumne River Confluence, as defined by the North Delta Flood Control and Ecosystem Restoration Project (McCormack-Williamson), or as modified in the future by the California Department of Water Resources or the U.S. Army Corps of Engineers (California Department of Water Resources 2010); and
(3) The Lower San Joaquin River Floodplain Bypass area, located on the Lower San Joaquin River upstream of Stockton immediately southwest of Paradise Cut on lands both upstream and downstream of the Interstate 5 crossing. This area is described in the Lower San Joaquin River Floodplain Bypass Proposal, submitted to the California Department of Water Resources by the partnership of the South Delta Water Agency, the River Islands Development Company, Reclamation District 2062, San Joaquin Resource Conservation District, American Rivers, the American Lands Conservancy, and the Natural Resources Defense Council, March 2011. This area may be modified in the future through the completion of this project.